

Phase II Findings

II. THE PHASE II ISSUE

A. INTRODUCTION

257. Mr. Parker was a party in two applicants which were found, in two decisions issued in mid-1988, to have engaged in serious misconduct. Both cases involved fraud or deceit perpetrated on and before the Commission. *Mt. Baker Broadcasting Co., Inc.*, 3 FCC Rcd 4777 (1988) (the "*Mt. Baker Proceeding*"); *Religious Broadcasting Network*, 2 FCC Rcd 6561 (ALJ 1987), *aff'd*, 3 FCC Rcd 4085 (Rev. Bd. 1988) (the "*San Bernardino Proceeding*").^{58/} In one of the cases the Parker-related applicant was found by an administrative law judge, in a decision adopted and affirmed by the Review Board, to be disqualified because of Mr. Parker's conduct.

258. Within four years of those decisions, Mr. Parker filed a number of applications to acquire broadcast authorizations. In each application, Mr. Parker failed to fully and candidly disclose the earlier determinations of fraudulent conduct, even though disclosure was required both by the application forms and by fundamental Commission jurisprudence. *E.g.*, *FCC v. WOKO, Inc.*, 329 U.S. 223 (1946); *Leflore Broadcasting Co. v. FCC*, 636 F.2d 454, 461 (D.C. Cir. 1980); *Swan Creek Communications v. FCC*, 39 F.3d 1217, 1222 (D.C. Cir. 1994); *Schoenbohm v. FCC*, 204 F.3d 243, 247 (D.C. Cir. 2000);

^{58/} The San Bernardino Proceeding was the subject of several later decisions. *Religious Broadcasting Network*, 3 FCC Rcd 6216 (Rev. Bd. 1988); 5 FCC Rcd 5331 (ALJ 1990); 5 FCC Rcd 5828 (Rev. Bd. 1990); 5 FCC Rcd 6362 (Rev. Bd. 1990); and 6 FCC Rcd 25 (Rev. Bd. 1991). None of those later decisions was directed to the Parker-related issue addressed in detail in the Review Board's Decision, 3 FCC Rcd 4085, 4090-91 (¶¶15-18) (Rev. Bd. 1988), and none of those later decisions expressly reversed or revised the Review Board's Decision reported at 3 FCC Rcd 4085.

Contemporary Media, Inc. v. FCC, 214 F.3d 187 (D.C. Cir. 2000).

259. This section of Adams's PFC presents the record evidence concerning:

- (a) The initial determinations of Mr. Parker's misconduct;
- (b) Mr. Parker's disclosures concerning those determinations of misconduct;
- (c) Mr. Parker's explanations of the manner in which he disclosed those determinations of misconduct;
- (d) Evidence affecting the credibility and reliability of Mr. Parker's explanations.

B. PAST ADJUDICATIONS OF MISCONDUCT BY MR. PARKER

(1) THE SAN BERNARDINO PROCEEDING

260. The *San Bernardino Proceeding* involved mutually exclusive applications for a new television construction permit in San Bernardino, California. *Religious Broadcasting Network*, 2 FCC Rcd 6561 (ALJ 1987) ("*San Bernardino Initial Decision*"). One of the competing applicants was San Bernardino Broadcasting Limited Partnership ("SBBLP"), alleged to be a limited partnership controlled by one Anita Van Osdel, the sole shareholder of SBBLP's corporate general partner. *Id.* at 6565. Mr. Parker was not listed as a principal of SBBLP. *Id.* However, in response to a motion to enlarge, a "real-party-in-interest" issue was added to permit inquiry into Mr. Parker's relationship to SBBLP.

261. Judge Gonzalez, who presided over the *San Bernardino Proceeding*, found that Mr. Parker had organized SBBLP and had originally held a limited partnership interest, although he transferred that interest to his sister and brother-in-law. *Id.* Mr. Parker prepared the SBBLP application. *Id.* at 6567. Ms. Van Osdel did not join SBBLP until the

day before its application was filed. *Id.* at 6566. Mr. Parker made all the financing and equipment leasing arrangements for SBBLP, and hired its communications counsel and consulting engineer. *Id.* at 6566. An employee of Mr. Parker's served as corporate secretary to SBBLP's corporate general partner. *Id.* Mr. Parker's office was listed as the corporate general partner's principal place of business. *Id.* Signatories on the corporate general partner's checking account were Mr. Parker, Mr. Parker's brother-in-law, an employee of Mr. Parker, and Ms. Van Osdel. *Id.* Ms. Van Osdel could not sign corporate checks by herself, although corporate checks would be signed without her participation. *Id.* Mr. Parker possessed the corporate checkbook. On one occasion when Ms. Van Osdel inadvertently kept the checkbook, she mailed it back to Mr. Parker. *Id.* Mr. Parker could have documents of SBBLP or its corporate general partner signed without Ms. Van Osdel's participation, but Ms. Van Osdel could not sign such documents without the signature of an employee of Mr. Parker. *Id.* Mr. Parker's brother-in-law was responsible for maintaining the SBBLP public inspection file. *Id.* Mr. Parker received copies of letters from SBBLP's communications counsel. *Id.* Immediately after Ms. Van Osdel became the sole shareholder of SBBLP's corporate general partner, she entered into a consulting agreement with Mr. Parker's company. *Id.* Without Ms. Van Osdel's prior approval, Mr. Parker was paid more than \$150,000, more than the consulting agreement provided and almost four times the total of invoices submitted by Mr. Parker's company. *Id.* at 6567.

262. Judge Gonzalez held that the evidence established that "Ms. Van Osdel was a last minute recruit to the SBBLP application which Mr. Parker prepared, sponsored and controlled." *Id.* According to Judge Gonzalez, the "evidence of record requires a negative

finding against SBBLP on the real-party-in-interest issue, mandating SBBLP's disqualification." *Id.*

263. In his Initial Decision, Judge Gonzalez also disqualified Sandino Telecasters, a competing applicant unrelated to Mr. Parker or SBBLP. *Id.* at 6565, 6594 (¶324).

264. The Review Board affirmed the *San Bernardino Initial Decision*. *Religious Broadcasting Network*, 3 FCC Rcd 4085 (Rev. Bd. 1988) ("*San Bernardino Review Board Decision*"). At Paragraph 1 of that decision the Review Board specifically "adopt[ed] the ALJ's findings and conclusions, except as modified herein."

265. The Review Board stated that Judge Gonzalez had disqualified SBBLP under the real-party-in-interest issue. *San Bernardino Review Board Decision* at 4090. The Board then stated:

We affirm, *con brio*, the ALJ's refusal to award "integration" credit to [SBBLP]; its application was and remains a travesty and a hoax. We need not repeat, point-by-point, all of the findings of fact which the ALJ has set out to support his conclusion that the progenitor and the real-party-in-interest of [SBBLP] is definitely not Van Osdel, she being merely a fig leaf for the true kingpin of [SBBLP], one Michael [sic] Parker, who currently holds an interest in numerous other broadcast permits (*I.D.*, para. 61), and who could not in his own identity have hoped to prevail in this very close comparative contest.

Id. The Board then reviewed in some detail some of the evidence adduced under the real-party-in-interest issue, and concluded:

After finding that significant and material questions of fact surrounded [SBBLP]'s claim that Van Osdel was the sole controlling party in its application, the ALJ added against [SBBLP] the aforementioned real-party-in-interest issue. . . . Having reviewed, in totality, the underlying record on this matter, we find no error in the ALJ's core conclusion that Van Osdel is neither the sole nor dominant management figure purported by [SBBLP], but a

convenient vizard. She can claim no serious or material role in [SBBLP]'s most elementary affairs. {SBBLP} is a transpicuous sham [citation omitted], and the ALJ justly rejected its attempted fraud.

Id. at 4091.

266. In the *San Bernardino Review Board Decision*, the Board also considered in detail Judge Gonzalez's findings and conclusions concerning the disqualification of Sandino. *Id.* at 4089-4090 (¶¶12-14). In sharp contrast to its treatment of SBBLP's disqualification, the Board expressly concluded:

. . . we find that the ALJ's disqualification of Sandino from this proceeding was error. . . . [W]e find no deliberate misrepresentation or lack of candor on Sandino's part. We therefore grant its exceptions. . .

Id. at 4090.

267. On reconsideration of the *San Bernardino Review Board Decision*, the Board did not address in any way its earlier decision with respect to SBBLP. 3 FCC Rcd 6216 (Rev. Bd. 1988). However, the Board did remand the proceeding to Judge Gonzalez for further hearing with respect to two other applicants, *i.e.*, neither SBBLP nor Sandino. *Id.* One of those two applicants was Inland Empire Television. *Id.* Both before the Review Board and in the supplemental remand proceedings, Inland Empire Television was represented by R. Clark Wadlow, an attorney who from time to time represented Mr. Parker. 3 FCC Rcd at 4085; 5 FCC Rcd at 5331.

268. Judge Gonzalez released his Supplemental Initial Decision following the remand hearing in August, 1990. 5 FCC Rcd 5331 (ALJ 1990). The Supplemental Initial Decision did not address in any way the earlier decisions concerning SBBLP. *Id.* However, in the Supplemental Initial Decision, Judge Gonzalez referred to the SBBLP real-party-in-

interest issue no fewer than three times as the "so-called Mike Parker issue". *Id.* at 5334-5335 (¶¶16-18).

269. Following release of the Supplemental Initial Decision, the remaining applicants in the *San Bernardino Proceeding* submitted requests for approval of a universal settlement agreement pursuant to which Sandino's application would be granted and all other applications dismissed. 5 FCC Rcd 6362 (Rev. Bd. 1990). The settlement agreements provided that Sandino would pay various amounts to each of the dismissing applicants. *Id.* By Memorandum Opinion and Order released on October 31, 1990, the Review Board granted the requests and approved the settlement. *Id.*

270. The Review Board's decision approving the San Bernardino settlements was five paragraphs long, scarcely more than one page. *Id.* The first paragraph simply identified the pleadings then before the Board for consideration. The second paragraph outlined the terms of the proposed settlements: Sandino would pay each of the remaining applicants certain sums in exchange for the dismissal of their applications. The fourth and fifth paragraphs consisted of the "ordering" clauses.

271. The third paragraph, reproduced here in full, contained the totality of the Board's discussion concerning the decision to approve the settlement:

Sandino is fully qualified to construct and operate as proposed. Further, pursuant to Section 73.3525 of the Commission's Rules, 47 C.F.R. §73.3525 (which implements 47 U.S.C. §311(c), as amended), the parties have each submitted their proposed settlement agreements, accompanied by the required declarations indicating that their respective applications were filed in good faith and not for the purposes of reaching or carrying out a settlement agreement. The parties indicate that the proposed settlement agreements will be in the public interest, and that this action will conserve the resources of the Commission and will expedite initiation of new television broadcast service at San Bernardino, California. In light of the foregoing, *and in the absence of*

any basic qualifying issues extant against the prevailing applicant, we find no impediment to the amicable settlement of this proceeding. Further, the Commission's Mass Media Bureau supports this resolution of the proceeding.

Id. (¶3) (emphasis added). On that basis the Review Board approved the settlement and concluded the *San Bernardino Proceeding*.

(2) THE MOUNT BAKER PROCEEDING

272. The *Mount Baker Proceeding* involved a construction permit for a new television station in Anacortes, Washington. 3 FCC Rcd 4777 (1989). The permit had been issued on July 1, 1983, to Mt. Baker Broadcasting Co., Inc. ("Mt. Baker"), whose dominant principal was Mr. Parker. *Id.* (¶1); Tr. 747. Although initially afforded until January 1, 1985, to complete construction, Mt. Baker failed to meet that deadline, and sought four extensions. The first three extension requests were granted; the last extension request was submitted to the Commission in July, 1986. 3 FCC Rcd 4777. When reviewing Mt. Baker's fourth extension application, the Mass Media Bureau found that Mt. Baker had not erected a tower or transmitter building, taken delivery of any equipment, or constructed any studio facilities. *Id.* (¶2). Accordingly, on December 5, 1986, the Bureau denied Mt. Baker's extension application and cancelled its permit. *Id.*

273. Mt. Baker sought reconsideration on December 31, 1986, advising the Bureau that the station had been constructed in December, 1986 and was "commencing program tests with its facility" on December 31. *Id.* (¶3). Because of those representations, on January 12, 1987, the Bureau reinstated the permit subject to the condition that Mt. Baker submit a license application within 10 days. *Id.*

274. Mt. Baker did not file a license application within the 10 days. *Id.* (¶4). By

April 28, 1987, no license application had been filed. *Id.* On that date, a representative of the Commission's Field Operations Bureau inspected the station and found that it was being operated with facilities substantially different from those authorized:

Specifically, the construction permit authorized an Andrew 33H 7 10/A21138 antenna installed on a tower 403 feet above ground level (AGL) with operation at 3630 kW visual effective radiated power (ERP). In contrast, the inspection showed that Mt. Baker had built a tower 100 feet AGL on which it installed a Scala SL-8 paraslot antenna. Further, the station was found to be operating at 10.3 kW ERP, using a transmitter specified to produce peak output power of only 1000 watts (1 kW). The facilities built are equivalent to those used by many television translator or low power television stations.

Id.

275. The Bureau concluded that Mt. Baker was operating without authority, and on June 23, 1987, it cancelled the construction permit and ordered Mt. Baker to cease operation.

Id.

276. Mt. Baker sought reconsideration of the Bureau's decision, but reconsideration was denied on January 25, 1988. *Id.* (§5). The Bureau concluded that "good faith had not been shown, or the station would have been built as authorized". *Id.*

277. Mt. Baker sought review by the full Commission of the cancellation of its permit. *Id.* (§6). In so doing, Mt. Baker did not take issue with any of the facts on which the Bureau's decisions had been based; instead, Mt. Baker argued that a monetary forfeiture, rather than cancellation of the permit, would be the appropriate sanction. *Id.*

278. By Memorandum Opinion and Order released on August 5, 1988, the Commission rejected that argument. According to the Commission,

forfeiture might be appropriate in some cases where construction differs by a modest degree from the facilities authorized. The departure in this case is clearly not modest; for example, operation with 10.3 kW ERP, compared to

3630 kW authorized. In addition, there are no significant mitigating circumstances in this case, but there are substantial aggravating factors. In that regard, improper construction did not occur through error or inadvertence; the facts clearly indicate an effort to deceive the Commission. A license application would have revealed what had been built and would, almost certainly, have been denied, but Mt. Baker did not file one, and the deception was not uncovered until the Field Operations Bureau inspection.

Id. (¶8).

C. MR. PARKER'S DISCLOSURES

279. The last decisions substantively addressing applicants related to Mr. Parker in the *San Bernardino* and *Mt. Baker* proceedings were released in July-August, 1988. Beginning less than a year later and continuing well into 1992, Mr. Parker sought in several applications to obtain Commission approval to become a principal of a number of broadcast licensees. Adams Exhs. 49-54. Each of those applications required disclosure of applications to which Mr. Parker had been a party and which had been dismissed or denied. Adams Exh. 49, p. 5; Adams Exh. 50, p. 9; Adams Exh. 51, p. 11; Adams Exh. 52, p. 12; Adams Exh. 53, p. 8; Adams Exh. 54, p. 10. Similarly, each of the applications filed by Mr. Parker in 1989-1992 required "full disclosure" of any adverse findings made by any court or administrative agency about fraud by any party to the application. Adams Exh. 49, p. 4; Adams Exh. 50, p. 7; Adams Exh. 51 p. 9; Adams Exh. 52, p. 7; Adams Exh. 53, p. 6; Adams Exh. 54, p. 7.

(1) KWBB(TV), SAN FRANCISCO, TRANSFER OF CONTROL

280. In March, 1989, an application (FCC Form 315) ("the KWBB(TV) Application") was filed proposing, *inter alia*, that Mr. Parker be approved as a new

shareholder of the licensee of Station KWBB(TV), San Francisco. Adams Exh. 50.

Although Mr. Parker did not sign this application, he acknowledged that he was "involved in it." Tr. 1939. ^{59/} The KWBB(TV) Application was filed by the law firm of Schnader, Harrison, Segal & Lewis, where Mr. Wadlow was a partner. Adams Exh. 50, p. 1. Mr. Parker recalled that Mr. Wadlow had prepared the application. Tr. 1952.

281. In response to the question seeking "full disclosure" as to whether any party to the application had been the subject of any adverse finding concerning fraud, the KWBB(TV) applicant responded "no". Adams Exh. 50, p. 7. In response to the question of whether any such matter was then pending in any forum, the KWBB(TV) applicant similarly responded "no". *Id.*

282. In response to the question of whether any party to the application had "any interest in or connection with" any application in any Commission proceeding which left unresolved character issues against the applicant, the KWBB(TV) applicant responded "no". Adams Exh. 50, p. 9.

283. In response to the question of whether any party to the application had "any interest in or connection with" any application which had been denied or dismissed with prejudice, the KWBB(TV) Application responded in the affirmative, and referred to an

^{59/} Mr. Parker appeared in the application as a proposed new shareholder, as well as Vice President and director of the licensee. Adams Exh. 50, p. 24. In addition, the "proposed transferee" shown in the Transferee's section of the application was "Lynette Ellertson". *Id.*, p. 6. Ms. Ellertson signed all three portions (transferor, licensee, transferee) of the application. Adams Exh. 50, pp. 13, 14, 15. Ms. Ellertson was an employee of Mr. Parker's, Adams Exh. 14, pp. 51-66. The residence address listed for Ms. Ellertson in the KWBB(TV) Application was the same as the residence address listed for Mr. Parker, Adams Exh. 50, pp. 6, 24, Tr. 1940.

exhibit. *Id.* That exhibit appears at Adams Exh. 50, pp. 26-28. The description of Mr. Parker's interests with respect to Mt. Baker as disclosed in that exhibit to the KWBB(TV) Application is as follows:

Micheal Parker is an officer, director, and shareholder of Mt. Baker Broadcasting Co., which was denied an application for extension of time of its construction permit for KORC(TV), Anacortes, Washington, FCC File No. BMPCT-860701KP. *See Memorandum Opinion and Order*, FCC 88-234, released August 5, 1988. Mt. Baker Broadcasting Co. has pending before the Commission a Petition for Reconsideration of that decision.

Id.

284. The KWBB(TV) Application contained no reference at all to the *San Bernardino Proceeding*.

(2) LOS ANGELES LPTV APPLICATION

285. In December, 1989, Mr. Parker filed an application ("the Los Angeles LPTV Application") in his individual name for a construction permit for a new low power television station in Los Angeles. Adams Exh. 49.

286. In response to the question seeking "full disclosure" as to whether any party to the application had been the subject of any adverse finding concerning fraud, Mr. Parker responded "no". Adams Exh. 49, p. 4. In response to the question of whether any such matter was then pending in any forum, Mr. Parker similarly responded "no". *Id.*

287. In response to the question of whether any party to the application had "any interest in" any application in any Commission proceeding which left unresolved character issues against the applicant, Mr. Parker responded "no". Adams Exh. 49, p. 5.

288. In response to the question of whether any party to the application had "any

interest in or connection with" any application which had been denied or dismissed with prejudice, Mr. Parker responded in the affirmative, and referred to an exhibit. *Id.* That exhibit appears at Adams Exh. 49, pp. 11. The description of Mr. Parker's interests in Mt. Baker as disclosed in that exhibit to the Los Angeles LPTV Application is as follows:

Micheal Parker is an officer, director, and shareholder of Mt. Baker Broadcasting Co., which was denied an application for extension of time of its construction permit for KORC(TV), Anacortes, Washington, FCC File No. BMPCT-860701KP. *See Memorandum Opinion and Order*, FCC 88-234, released August 5, 1988. Mt. Baker Broadcasting Co. has pending before the Commission a Petition for Reconsideration of that decision.

Id. That description is identical to the description in the KWBB(TV) Application.

289. The Los Angeles LPTV Application contained no reference to the *San Bernardino Proceeding*.

(3) **WHRC(TV), NORWELL, MASSACHUSETTS TRANSFER APPLICATION**

290. On July 24, 1991, an application (FCC Form 315) ("the WHRC(TV) Application") for consent to the transfer of control of the licensee of Station WHRC(TV), Norwell, Massachusetts, was submitted to the Commission. Adams Exh. 51. The proposed transferee was Two If By Sea Broadcasting Corporation ("TIBS"). Adams Exh. 51, p. 8. Mr. Parker was an officer, director and the sole shareholder of TIBS. *Id.*, p. 10. Mr. Parker executed the transferee's portion of the WHRC(TV) Application. *Id.* at 15. The application was filed by Eric Kravetz on behalf of the proposed transferor; Mr. Kravetz's transmittal letter referred questions concerning TIBS's portion of the application to

H. Marvin Mercer, III, Esq. RBI Exh. 46, Attachment E, p. E1. ^{60/}

291. In response to the question seeking "full disclosure" as to whether any party to the application had been the subject of any adverse finding concerning fraud, Mr. Parker responded "no". Adams Exh. 51, p. 9. In response to the question of whether any such matter was then pending in any forum, Mr. Parker similarly responded "no". *Id.*

292. In response to the question of whether any party to the application had "any interest in or connection with" any application in any Commission proceeding which left unresolved character issues against the applicant, Mr. Parker responded "no". Adams Exh. 51, p. 11.

293. In response to the question of whether any party to the application had "any interest in or connection with" any application which had been denied or dismissed with prejudice, Mr. Parker responded in the affirmative, and referred to an exhibit. *Id.* That exhibit appears at Adams Exh. 51, pp. 16-18. The description of Mr. Parker's interests in Mt. Baker and the *San Bernardino Proceeding* as disclosed in that exhibit to the WHRC(TV) Application is as follows:

Micheal Parker was an officer, director and shareholder of Mt. Baker Broadcasting Co., which was denied an application for extension of time of its construction permit for KORC(TV), Anacortes, Washington, FCC File No. BMPCT-860701KP. *See Memorandum Opinion and Order*, FCC 88-234, released August 5, 1988.

Although neither an applicant nor the holder of an interest in the applicant to the proceeding, Micheal Parker's role as a paid independent

^{60/} At the time that the WHRC(TV) Application was filed, Mr. Parker was represented by Mr. Wadlow, who was then with the law firm of Sidley & Austin. *See, e.g.*, Adams Exhs. 59, 78-80, 82-83. Asked why he did not rely on Mr. Wadlow to assist him with the WHRC(TV) Application, Mr. Parker responded, "Money". Tr. 1951.

consultant to San Bernardino Broadcasting Limited Partnership ("SBB"), an applicant in MM Docket No. 83-911 for authority to construct a new commercial television station on Channel 30 in San Bernardino, CA, was such that the general partner in SBB was held not to be the real party in interest to that applicant and that, instead, for purposes of the comparative analysis of SBB's integration and diversification credit, Mr. Parker was deemed such. *See e.g. Religious Broadcasting Network et. al.*, FCC 88R-38, released July 5, 1988. MM Docket No. 83-911 was settled in 1990 and Mr. Parker did not receive an interest of any kind in the applicant awarded the construction permit therein, Sandino Telecasters, Inc. *See Religious Broadcasting Network et. al.*, FCC 90R-101, released October 31, 1990.

Adams Exh. 51, pp. 17-18.

(4) THE WTVE(TV) TRANSFER APPLICATION

294. On November 13, 1991, an application (FCC Form 315) ("the WTVE(TV) Application") for consent to the transfer of control of the licensee of Station WTVE(TV) was submitted to the Commission. Adams Exh. 52. The proposed transferees included Partel, Inc., Mr. Parker's corporate alter ego, as a proposed shareholder; Mr. Parker was also identified as a party to the application in the section entitled "Transferee's Legal Qualifications". Adams Exh. 52, p. 11. Mr. Parker executed all portions of the WTVE(TV) Application. *Id.* at 16-18. This application was filed by the law firm of Sidley & Austin, although the disclosure language discussed below was essentially identical to the equivalent language in the WHRC(TV) Application, in whose preparation Sidley & Austin attorneys were not involved. Tr. 1805, 2105.

295. In response to the question seeking "full disclosure" as to whether any party to the application had been the subject of any adverse finding concerning fraud, Mr. Parker responded "no". Adams Exh. 52, p. 7. In response to the question of whether any such matter was then pending in any forum, Mr. Parker similarly responded "no". *Id.*

296. In response to the question of whether any party to the application had "any interest in or connection with" any application in any Commission proceeding which left unresolved character issues against the applicant, Mr. Parker responded "no". Adams Exh. 52, p. 12.

297. In response to the question of whether any party to the application had "any interest in or connection with" any application which had been denied or dismissed with prejudice, Mr. Parker responded in the affirmative, and referred to an exhibit. *Id.* That exhibit appears at Adams Exh. 52, pp. 29-30. The description of Mr. Parker's interests with respect to Mt. Baker and the *San Bernardino Proceeding* as disclosed in that exhibit to the WTVE(TV) Application is as follows:

Micheal Parker also was an officer, director and shareholder of Mt. Baker Broadcasting Co. Mt. Baker Broadcasting Co.'s application for extension of time of its construction permit for KORC(TV), Anacortes, Washington (FCC File No. BMPCT-860701KP) was denied. *See Memorandum Opinion and Order*, FCC 88-234, released August 5, 1988.

Although neither an applicant nor the holder of an interest in the applicant to the proceeding, Mr. Parker's role as a paid independent consultant to San Bernardino Broadcasting Limited Partnership ("SBB"), an applicant for authority to construct a new commercial television station on Channel 30 in San Bernardino, California (MM Docket No. 83-911), was such that the general partner in SBB was held not to be the real-party-in-interest to that applicant and that, for purposes of the comparative analysis of SBB's integration and diversification credit, Mr. Parker was deemed such. *See e.g. Religious Broadcasting Network et. al.*, FCC 88R-38, released July 5, 1988. This proceeding was settled in 1990 and Mr. Parker did not receive an interest of any kind in the Sandino Telecasters, Inc., the applicant awarded the construction permit. *See Religious Broadcasting Network et. al.*, FCC 90R-101, released October 31, 1990.

Adams Exh. 52, p. 30.

(5) **THE KVMD(TV), TWENTYNINE PALMS, CALIFORNIA TRANSFER APPLICATION**

298. On June 4, 1992, an application (FCC Form 315) ("the KVMD(TV) Application") for consent to the transfer of control of the permittee of Station KVMD(TV), Twentynine Palms, California, was submitted to the Commission. Adams Exh. 53. The proposed transferee was Mr. Parker. *Id.*, pp. 5, 7. Mr. Parker executed the transferee's portion of the KVMD(TV) Application. *Id.* at 14. This application does not appear to have been filed by any law firm.

299. In response to the question seeking "full disclosure" as to whether any party to the application had been the subject of any adverse finding concerning fraud, Mr. Parker responded "no". Adams Exh. 53, p. 6. In response to the question of whether any such matter was then pending in any forum, Mr. Parker similarly responded "no". *Id.*

300. In response to the question of whether any party to the application had "any interest in or connection with" any application in any Commission proceeding which left unresolved character issues against the applicant, Mr. Parker responded "no". Adams Exh. 53, p. 8.

301. In response to the question of whether any party to the application had "any interest in or connection with" any application which had been denied or dismissed with prejudice, Mr. Parker responded in the affirmative, and referred to an exhibit. *Id.* That exhibit appears at Adams Exh. 53, pp. 18-20. The description of Mr. Parker's interests with respect to Mt. Baker and the *San Bernardino Proceeding* as disclosed in that exhibit to the KVMD(TV) Application is as follows:

Micheal Parker also was an officer, director and shareholder of Mt. Baker

Broadcasting Co. Mt. Baker Broadcasting Co.'s application for extension of time of its construction permit for KORC(TV), Anacortes, Washington (FCC File No. BMPCT-860701KP) was denied. *See Memorandum Opinion and Order*, FCC 88-234, released August 5, 1988.

Although neither an applicant nor the holder of an interest in the applicant to the proceeding, Mr. Parker's role as a paid independent consultant to San Bernardino Broadcasting Limited Partnership ("SBB"), an applicant for authority to construct a new commercial television station on Channel 30 in San Bernardino, California (MM Docket No. 83-911), was such that the general partner in SBB was held not to be the real-party-in-interest to that applicant and that, for purposes of the comparative analysis of SBB's integration and diversification credit, Mr. Parker was deemed such. *See e.g. Religious Broadcasting Network et. al.*, FCC 88R-38, released July 5, 1988. This proceeding was settled in 1990 and Mr. Parker did not receive an interest of any kind in the Sandino Telecasters, Inc., the applicant awarded the construction permit. *See Religious Broadcasting Network et. al.*, FCC 90R-101, released October 31, 1990.

Adams Exh. 53, p. 19-20.

(6) THE KCBI, DALLAS, TEXAS ASSIGNMENT APPLICATION

302. On August 3, 1992, an application (FCC Form 314) ("the KCBI Application") for consent to the assignment of the license of International Broadcast Station KCBI, Dallas, Texas, was submitted to the Commission. Adams Exh. 54. The proposed assignee was TIBS, *id.*, p. 6, of which, again, Mr. Parker was listed as the sole shareholder, *id.*, p. 8. Mr. Parker executed the assignee's portion of the KCBI Application, *id.*, p. 15, as well as the cover letter transmitting the application to the Commission, *id.*, p. 1.

303. In response to the question seeking "full disclosure" as to whether any party to the application had been the subject of any adverse finding concerning fraud, Mr. Parker responded "no". Adams Exh. 54, p. 7. In response to the question of whether any such matter was then pending in any forum, Mr. Parker similarly responded "no". *Id.*

304. In response to the question of whether any party to the application had "any interest in or connection with" any application in any Commission proceeding which left unresolved character issues against the applicant, Mr. Parker responded "no". Adams Exh. 54, p. 10.

305. In response to the question of whether any party to the application had "any interest in or connection with" any application which had been denied or dismissed with prejudice, Mr. Parker responded in the affirmative, and referred to an exhibit. *Id.* That exhibit appears at Adams Exh. 54, pp. 22-25. The description of Mr. Parker's interests with respect to Mt. Baker and the *San Bernardino Proceeding* as disclosed in that exhibit to the KCBI Application is as follows:

In addition, Micheal Parker was an officer, director and shareholder of Mt. Baker Broadcasting Co., which was denied an application for extension of time of its construction permit for KORC(TV), Anacortes, Washington, FCC File No. BMPCT-860701KP. *See Memorandum Opinion and Order*, FCC 88-234, released August 5, 1988.

Although neither an applicant nor the holder of an interest in the applicant to the proceeding, Micheal Parker's role as a paid independent consultant to San Bernardino Broadcasting Limited Partnership ("SBB"), an applicant in MM Docket No. 83-911 for authority to construct a new commercial television station on Channel 30 in San Bernardino was such that the general partner of SBB was held not to be the real-party-in-interest to that applicant and that, for the purposes of the comparative analysis of SBB's integration and diversification credit, Mr. Parker was deemed such. *See e.g. Religious Broadcasting Network et. al.*, FCC 88R-38, released July 5, 1988. MM Docket No. 83-911 was settled in 1990 and Mr. Parker did not receive an interest of any kind in the applicant awarded the construction permit therein, Sandino Telecasters, Inc. *See Religious Broadcasting Network et. al.*, FCC 90R-101, released October 31, 1990.

Adams Exh. 54, p. 24-25.

306. As a comparison of the above-quoted disclosures demonstrates, Mr. Parker's

disclosures concerning the *Mt. Baker Proceeding* and the *San Bernardino Proceeding* in the WHRC(TV) Application, the WTVE(TV) Application, the KVMD(TV) Application and the KCBI Application were all essentially identical. While the WHRC Application, the WTVE Application and the KVMD Application were all granted without any inquiry from the Commission's staff concerning those disclosures, Tr. 1974-1975, that was not the case with the KCBI Application.

307. In October, 1992, the Commission's staffmember processing the KCBI Application requested that TIBS state in an amendment whether any basic character issues had been sought or added with respect to any of the applications listed in the KCBI Application. Bureau Exh. 2, p. 2. According to the staffmember (as recalled by Mr. Kravetz),

there was nothing explicit in the application that talked about whether character issue had been added or raised with regard to the other applications with which the applicant was connected -- the applicant and its principals were connected.

Tr. 2355. Mr. Parker retained Mr. Kravetz, an experienced communications attorney, to assist in responding to the staff's inquiry. RBI Exh. 45, p. 8; Tr. 2353-2354. Mr. Kravetz had represented the Transferor in the WHRC(TV) Application. RBI Exh. 46. Attachment E, p. E1. However, neither Mr. Kravetz nor his firm had previously represented Mr. Parker in any way. ^{61/}

^{61/} When asked why he had chosen Mr. Kravetz, as opposed to Mr. Wadlow, to assist in responding to the staff inquiry concerning the KCBI application, Mr. Parker suggested that he had already been moving his business to Mr. Kravetz's firm. Tr. 1978. On further examination concerning that claim, Mr. Parker conceded that, contrary to his earlier testimony, he had *not* previously been represented by Mr. Kravetz or his firm and had not previously moved any business to them. Tr. 1978-1979.

308. Mr. Kravetz spoke directly with the staffperson to determine the additional information which she needed, and then communicated that to Mr. Parker. Tr. 2354-2355. Mr. Kravetz asked Mr. Parker if Mr. Parker could provide the needed information, *i.e.*, whether any character issue had been added or raised with regard to the applications listed in the KCBI Application. *Id.* Mr. Parker told Mr. Kravetz that he could, and Mr. Kravetz prepared and sent to Mr. Parker an amendment for that purpose. *Id.* Mr. Parker signed that amendment and returned it to Mr. Kravetz, who filed it with the Commission. *Id.*, pp 2255-2356.

309. The amendment ("the KCBI Amendment") to the KCBI Application, which appears as Adams Exh. 55, p. 3, states as follows:

Two If By Sea Broadcasting Corporation ("Two If By Sea") has applied for authority to acquire Station KCBI from Criswell Center for Biblical Studies. As part of that application, Two If By Sea listed applications in which its officers, directors and principals had held interests and which were dismissed at the request of the applicant. This will confirm that no character issues had been added or requested against those applicants when those applications were dismissed.

The record reflects that the Commission's staff relied on that amendment in determining that the KCBI Application could be granted. Adams Exh. 57, p. 7; Bureau Exh. 2, p. 3.

D. MR. PARKER'S EXPLANATIONS

310. Mr. Parker was given the opportunity, both in RBI's direct evidence and during cross examination, to explain why he chose to disclose the *Mt. Baker Proceeding* and the *San Bernardino Proceeding* in the manner(s) described above in: (a) the KWBB(TV) Application (which was essentially identical to the later-filed Los Angeles LPTV Application); (b) the WHRC(TV) Application (which was essentially identical to the later-

filed WTVE(TV) Application, KVMD(TV) Application, and KCBI Application); and (c) the KCBI Amendment.

(1) **THE KWBB(TV) APPLICATION**

311. Mr. Parker testified that he believed that his then-communications counsel, R. Clark Wadlow, then a partner at Schnader, Harrison, prepared the exhibit to the KWBB(TV) Application which did refer to the *Mt. Baker Proceeding* but did not refer to the *San Bernardino Proceeding*. Tr. 1941-1942. Asked why the exhibit did not mention the *San Bernardino Proceeding*, Mr. Parker indicated that he believed that that proceeding "had not reached finality at that point". Tr. 1941. When it was pointed out to him that, according to the exhibit in question, the *Mt. Baker Proceeding* was at that time subject to a still-pending petition for reconsideration and, therefore, not itself final, Mr. Parker responded

we're talking apples and oranges. One's a proceedings, the other was a different kind of a decision.

Tr. 1942. He then reiterated that he was merely following Mr. Wadlow's advice. *Id.*

312. Mr. Wadlow was examined about the KWBB(TV) Application. Tr. 1865. He testified that he is not aware of any particular reason for the omission from that application of any reference to the *San Bernardino Proceeding*. *Id.* He also testified that he did not believe that he had read the *Mt. Baker* decision at the time of the KWBB(TV) Application. *Id.* ^{62/}

313. Mr. Parker's attention was directed to the questions in the KWBB(TV)

^{62/} Mr. Wadlow testified that he had read the *Mt. Baker* decision "recently" and "it struck me that I had not read that before". Tr. 1865.

Application which required full disclosure of previous findings relating to fraud. Tr. 1944-1947. As noted above, the responses in the KWBB(TV) Application indicated that there had been no such previous findings. Adams Exh. 50, p. 7.

314. Mr. Parker was asked:

Q Isn't it true that the review board had just eight months earlier [*i.e.*, prior to the filing of the KWBB(TV) Application] found that you had engaged in attempted fraud on the Commission?

Tr. 1944. He responded:

A No.

Id. He then reiterated that response:

Q The review board did not find that?

A No.

Tr. 1944. In explanation, Mr. Parker expressed the view that none of the Review Board's language concerning "fraud" was directed to him:

Q All right, now, is it your testimony that [the *San Bernardino Review Board Decision*] does not reflect a determination by the review board that you had engaged in attempted fraud before the Commission?

A I never owned any stock in SBB. When they got \$850,000, I never got a dime [^{63/}], and my name doesn't appear there. And to the best of my knowledge, no one has ever put up the thought that I have been found guilty of anything other than for purposes of the level of my activity with regard to SBB, I was found a real party in interest.

Q So your testimony is that the review board's reference to "attempted fraud" on the part of SBB had nothing to do with you?

^{63/} With respect to Mr. Parker's assertion that he "didn't get a dime", Mr. Parker later conceded that his sister and brother-in-law did own interests in SBBLP, which he had given to them. Those shares amounted to a 20% interest in SBBLP. Mr. Parker's sister and brother-in-law shared in the \$850,000 settlement payment. Tr. 2073.

A Not in terms of a finding of fraud, no. I don't believe that to be the case.

* * *

Q And [the Review Board's language at Paragraph 16 of the *San Bernardino Review Board Decision*] in your mind did not indicate the review board was finding that you were involved in attempted fraud on the Commission?

A No, I do not.

Tr. 1945-1946.

315. Mr. Parker was asked how the "fraud" question in the KWBB(TV) Application could be answered in the negative in light of the Commission's decision in the *Mt. Baker Proceeding*, in which Mr. Parker's corporation had been found to have engaged in an effort to deceive the Commission. Tr. 1747. Mr. Parker responded:

I believe in the Mount Baker case it outlines exactly what the position with regard to the disclosure is on page 2, [Adams Exhibit] 50 page 27, and it indicates that in fact -- it outlines that and disclosures exactly what that memorandum opinion order, refers it to the Commission, and I don't believe that the two are inconsistent at all. And I believe that the statement is accurate, and I'm sure you will spend a lot of time disagreeing with that.

Id.

(2) THE WHRC(TV) APPLICATION

316. As noted above, the *San Bernardino Proceeding* was *not* mentioned in the KWBB(TV) Application filed within a year of the *San Bernardino Review Board Decision*, but it *was* mentioned in the WHRC(TV) Application. Mr. Parker was asked whether he thought this was strange. Tr. 1957. He responded, "I believe one was filed in March of '89 and the other was filed in July of '91. So it doesn't -- the answer is no." *Id.*

317. Mr. Parker was examined about the language of his disclosure concerning the

San Bernardino Proceeding in the WHRC(TV) Application. In particular, Mr. Parker was asked how he could say in that disclosure that he was not the holder of an interest in SBBLP when Judge Gonzalez and the Review Board had found that he was, as a matter of fact, the real-party-in-interest in SBBLP. Tr. 1960-1968. His efforts to respond to that question included:

I mean, what I am saying is a real party in interest, they never allege that I had some secret hidden ownership interest, or I was having any money, or I committed anything other than that the applicant should have had reported the level of my involvement for purposes of the application in terms of claiming integration and diversification credit.

Tr. 1964

As I understand it, you know, it's kind of like, as I understood it, there are different levels of being a real party in interest. In other words, if I had had 20 percent ownership in this application and I was hiding that and deceiving the Commission with regard to that interest, or if I had hidden the interest in it, that would be one thing.

As I understand, their ruling was I was so pervasive in the attorneys, hiring the attorneys, in getting the --

JUDGE SIPPEL: In controlling the application.

THE WITNESS: Yes. But I was a paid consultant. I got paid for my services. I got fired when it became an issue. When the \$850,000 came down, the money went out to the various people who did have an interest in accordance with their interest. I never got a dime from that settlement, wasn't ever intended to get it.

And that's how I understand the review board when they affirmed the judge in terms of the comparative analysis, yes. I had too big an interest and the applicant should have disclosed that in her application.

Tr. 1967.

318. Mr. Parker elaborated on the last thought expressed in the quote immediately above, *i.e.*, that Ms. Van Osdel "should have disclosed" his interest in SBBLP. According

to him, the addition of the real-party-in-interest issue in the *San Bernardino Proceeding* was attributable not to any misconduct by Mr. Parker, but rather to a failure by Ms. Van Osdel to report Mr. Parker's involvement in the SBBLP application. Mr. Parker stated:

had [Ms. Van Osdel] reported that involvement there never would have been an issue added. The fact she didn't report and they added the issue, held a hearing on it, and determined that I was too much involved in the processing of the application, that my involvement was too pervasive, therefore, I was a real party in interest and she wasn't entitled to the integration credit.

Tr. 1969; *see also* Tr. 2008, 2010, 2085.

(3) THE DALLAS AMENDMENT

319. In his written direct testimony, Mr. Parker chose not to specifically acknowledge the actual language of the Dallas Amendment. Instead, he described his recollection of a conversation he had with Mr. Kravetz in connection with the preparation of the Dallas Amendment. According to that recollection, Mr. Parker or his employee

indicated [to Mr. Kravetz] that there were no unresolved character issues pending when the application to which I was a party were dismissed.

RBI Exh. 46, p. 8. But that is substantially different from the language of the Dallas Amendment which Mr. Parker executed. The Dallas Amendment stated that "no character issues had been added or requested" relative to the applications which had been listed in the KCBI Application. *See* Adams Exh. 55, p. 3.

320. Mr. Parker was asked to explain why, while a basic qualifying issue *had* been both requested and added against SBBLP in the *San Bernardino Proceeding*, the Dallas Amendment expressly denied that any such issues had been sought or added in connection with any of the applications listed in the KCBI Application as originally filed. Tr. 1983-

1992.

321. Mr. Parker responded that the Dallas Amendment was not intended to include the *San Bernardino Proceeding* as one of the applications referenced therein based on Mr. Parker's reading of the description of the *San Bernardino Proceeding* in the original KCBI Application. *E.g.*, Tr. 1986-1987. That description was prefaced with the language "Although neither an applicant nor the holder of an interest in the applicant". Adams Exh. 54, p. 24. Mr. Parker seemed to say that since the Dallas Amendment was, by its terms, limited to applications in which Mr. Parker "had held [an] interest[]", the Dallas Amendment was not intended to refer to the *San Bernardino Proceeding*. Tr. 1987-1988. Succinctly put, Mr. Parker's position was that the Dallas Amendment was correct as long as it was read *not* to include the *San Bernardino Proceeding*.

322. Later in his cross examination Mr. Parker suddenly returned, on his own, to this question and volunteered a completely different explanation for the Dallas Amendment. At Tr. 2027-2028, Mr. Parker suggested that the Dallas Amendment was correct even if it were deemed to include the *San Bernardino Proceeding* because, in his view, the disqualifying issues in the *San Bernardino Proceeding* had been resolved favorably to him in the *San Bernardino Review Board Decision*. Here, Mr. Parker claimed that that Decision did not affirm Judge Gonzalez's disqualification of SBBLP, but was limited to an adverse comparative resolution insofar as SBBLP and Mr. Parker were concerned. As a result, Mr. Parker now seemed to say, the adverse resolution of the basic qualifications issue had been reversed or somehow negated by the *San Bernardino Review Board Decision*. *See also* Tr. 2064-2067, 2070.

323. Mr. Parker also testified that he viewed the Review Board's approval of the San Bernardino settlement as confirming that the disqualifying real-party-in-interest issue had been resolved favorably to SBBLP. According to Mr. Parker, he "believed that the Commission's rules did not permit a disqualified applicant to receive a settlement payment." RBI Exh. 46, p. 4; *see also* Tr. 2070.

(4) THE WADLOW LETTER AND ADVICE OF COUNSEL

324. Mr. Parker testified that he placed substantial reliance on advice he received from Mr. Wadlow and other unidentified counsel concerning the effect of the San Bernardino real-party-in-interest issue on Mr. Parker's qualifications. According to Mr. Parker's written testimony,

[w]ith respect to the San Bernardino proceeding, Clark Wadlow advised me in writing that the case did not present questions as to my qualifications.

RBI Exh. 46, p. 3. The written advice from Mr. Wadlow to which Mr. Parker was referring appears as Adams Exh. 58. It is in the form of a letter ("the Wadlow Letter"), dated February 18, 1991, from Mr. Wadlow to Mr. Parker. With respect to the overall impact of the *San Bernardino Proceeding* on Mr. Parker's qualifications, the letter stated:

It is our opinion that the Administrative Law Judge ("ALJ") simply concluded that SBBLP had failed to report your activities and involvements with SBBLP -- which the ALJ found to be such as to make you a real party-in-interest. However, the ALJ did not find that you had done anything improper [sic] or that anything you had done reflected adversely on you.

Adams Exh. 58, p. 1. This was the only written advice to this effect that Mr. Parker

received. Tr. 1996 ^{64/}

325. Further, Mr. Parker indicated that he had received similar advice orally. Tr. 1996, 1997, 2010. The only source of such oral advice whom he specifically identified was Mr. Wadlow. However, he could not recall any details of any conversations with Mr. Wadlow. Tr. 2012. ^{65/} Mr. Parker further volunteered that Mr. Wadlow's advice had been seconded by some unspecified number of other unidentified counsel:

I remember at various times discussing with other attorneys. I don't know specifically whether it was in reference to these applications, but any of the legal counsel that I had working on various cases, none of them disagreed with Mr. Wadlow's conclusion that I can recall.

Tr. 1997.

^{64/} Tr. 1996:

Q: Is there any other advice [other than the Wadlow letter] that you are able to point us to?

A: In written form, no.

^{65/} Tr. 2012:

Q: About how often did you [receive oral advice from Mr. Wadlow concerning the effect of the *San Bernardino Proceeding* on your qualifications]?

A: Oh, I don't recall. We talk back and forth.

Q: About how many times?

A: I don't have any recall of how many times.

Q: When did they occur, these conversations?

A: Well, clearly, the conversation leading up to this letter, but I over the years have talked about this case with Mr. Wadlow on occasion. But when specifically, I don't have any recall.